Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

In The

SUPREME COURT OF THE UNITED STATES
October Term, 1998

Rose Marie Davison, Taxpayer # 039-18-4698;
Riley Sean Davison, Petitioner's Assistant,
PETITIONER,
v.
United States; Internal Revenue Service,
RESPONDENT.

On Petition for Writ of Certiorari
To The United States District Court
Western District of Texas, San Antonio Division

Mandate: United States Court of Appeals for the Fifth Circuit
ORIGINALLY FILED IN ACCORDANCE WITH RULE 11

Rule 38 Fee Prepaid - March 18, 1999
Timely Resubmitted - Rule Adherent

AMENDED PETITION FOR WRIT OF CERTIORARI

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(a) *i

1) Is arbitration to be considered National Policy?

2) Does the United States, or its Agent, have a place in the civil action of divorce between a husband and a wife?

3) Should the United States legally deny Justice to an American citizen?

4) Is the failure or inability to quote the applicable U.S. law, regulation, statute, etc., tantamount to the automatic denial of protection and/or entitlement under same?

5) If... two separate classes of American citizens have been denied equal treatment under the revenue laws of the United States, namely innocent spouses and their children; what legal recourse does each class have?

6) When the United States itself, and through its Agent, the Internal Revenue Service, has broken the law; who must it answer to, and how?

7) Should the United States attempt to lead by example?

8) **Can, or should, the United States be "compelled" to arbitrate?**

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]*

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Rule 14.1.

(d) Official/Unofficial Reports: Opinions/Orders;Courts/Agencies.

* **"Community Property Income Split... 1980.**
(pp. 139, 140 Original Record (O/R)).

(??? The Original Petition for Divorce was NOT FILED until December of 1984.)

* ***"... this office is closing your case..."*** Lee R. Monks, Federal Taxpayer Advocate (p.26 Appendix (Appx)).

('Your Problem Resolution Officer will inform you that you will not receive any compensation for our 'mistake', nor receive the bulk of the money you have 'invested' in this country; instead telling you to "go ahead and sue".) (Note: STATUTORY LIMIT.)

* ***"I regret that we cannot furnish you with any information... power of attorney..."***
Tom George(?) for Austin, TX, IRS District Director Pam C. Bigelow (p. 27 Appx).

('What we did do, however, was allow the following United States Tax Attorney to accept the signature of your mother's bankruptcy attorney, who likewise did not have proper IRS power of attorney; to a document, by law, he could not sign, to waive refunds, by law, he could not waive.') (pp. 23, 24 Appx).

* **"The Court lacks jurisdiction to "compel" the United States to participate in arbitration."**
U.S. Attorney Cynthia E. Messersmith (p. 31 O/R).

('I'll help the Judge 'do the right thing' by providing an easy, fill-in-the-blank dismissal.') (Absent from O/R).

* ***"Plaintiff has not alleged AND DEFENDANT DENIES that there is an agreement between the United States Internal Revenue Service and plaintiff to arbitrate any matter..."***
U.S. Magistrate Judge Pamela A. Mathy (p. 7 Appx).

('Bet they cain't even spell Federal Regulations...')

* ***"Denied." "Denied."*** U.S. District Judge Fred Biery ('Next case...) (Oh wait, they're back...) (pp. 10, 12 Appx).

* **"Before the Court are Plaintiff Pro Se's Formal Application Under Title 9 United States Code Section 3..." "DENIED. ORDERED, SIGNED and ENTERED..." Judge Biery** *2 **(p. 13 Appx).**

(e) Concise Statement of the basis for jurisdiction of This Court:

(i) Please review: JUDGMENT/ORDER, filed January 20, 1999; ORDER filed February 18, 1999. (This Petition was originally filed March 15, 1999; under Rule 11.)

THIS CASE IS OF IMPERATIVE PUBLIC IMPORTANCE. The legal questions presented herein are far greater than this Petitioner; the Constitutional deprivations far more important than the mistakes made in pursuit of Justice, though they be many.

(iv) **28 U.S.C. 2106. Determination: The Supreme Court ... may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, *and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had AS MAY BE JUST UNDER THE CIRCUMSTANCES.***

(f) A great deal of applicable Law is cited verbatim in the Original Record, and much more will be provided in the Brief on the Merits; provided now herein, are but some of the legal answers to, and the negation of, the arguments of the Respondent.

"1. Does this [District] Court have subject matter jurisdiction to consider plaintiff's request?" (p. 5 Appx).

VERBATIM/ /QUOTATIONS

28 U.S.C. Sec. 1340: Internal Revenue; customs duties
The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue,... (pp. 155, 188 O/R).

28 U.S.C. Sec. 1346: ***United States as defendant***
(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: (1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal -revenue laws;....
(pp. 155, 156, 190 O/R).

26 U.S.C. Sec. 7433: **Civil damages for certain unauthorized collection actions** (a) In general If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions....(pp. 157, 198 O/R).

28 U.S.C. Sec. 1334: **Bankruptcy cases and proceedings** (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11. (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.... (pp. 155, 187 O/R).

28 U.S.C. Sec. 158: **Appeals** (a) The district courts of the United States shall have jurisdiction to hear appeals (1) from final judgments, orders, and decrees;...[Title 11]
(pp. 155, 185 O/R).

28 U.S.C. Sec. 2674: **Liability of the United States** The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.... (pp. 158, 200 O/R).

28 U.S.C. Sec. 658: **District courts that may authorize arbitration** The district courts for the following judicial districts may authorize the use of arbitration under this chapter: (1)..., and Western District of Texas....
(pp. 155, 182 O/R).

28 U.S.C. Sec. 1331: **Federal Question** The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. (p. 6 Appx).

28 U.S.C. Sec. 636: **Jurisdiction, powers, and temporary assignment (b) (1)** Notwithstanding any provision of law to the contrary - (A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except...
to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.
(pp. 1, 2, 4, 8, 11, 12 Appx).

5 U.S.C. Sec. 571: **Definitions** For the purposes of this subchapter, the term - ...
(2) "administrative program" includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;...

5 U.S.C. Sec. 575: **Authorization of arbitration ...**
(c) Prior to using binding arbitration under this subchapter, the head of an agency, in consultation with the Attorney General and after taking into account the factors in section 572(b), shall issue guidance on the appropriate use of binding arbitration and when an officer or employee of the agency has authority to settle an issue in controversy through binding arbitration.

5 U.S.C. Sec. 576: **Enforcement of arbitration agreements** An agreement to arbitrate a matter to which this subchapter applies is enforceable pursuant to section 4 of title 9, and no action brought to enforce such an agreement shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

28 U.S.C. Sec. 528: **Disqualification of officers and employees of the Department of Justice**
The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office. (pp. 168, 240 O/R).

28 Code of Federal Regulations 50.20(b)(1): Subject to the considerations set forth in the following paragraphs and the restrictions set forth in paragraphs (c) and (d), in a case assigned to arbitration or mediation under a local district court rule, the Department of Justice agrees to participate in the arbitration process under the local rule. (pp. 166, 220, 222 O/R).
[Order No. 1109-85, 50 FR 40524, Oct. 4, 1985].

28 CFR 50.20(c)(3)(iii)post: The Solicitor General, the Assistant Attorneys General, and the U.S. Attorneys are instructed to take all appropriate steps to resist the imposition of such penalties or sanctions against the United States. (p. 221 O/R).

9 U.S.C. Sec. 4: **Failure to arbitrate under agreement; petition to United States court having jurisdiction for Order to compel arbitration; notice and service thereof; hearing and determination ...**
If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof....
(THROUGHOUT **Original Record**)

Did Petitioner "fail to state a claim"?
Should the Magistrate Judge have considered same?

(g) Concise Statement of the Case: [District Court Docket Sheet With Page Notations Provided to the Clerk of This Court]

Within 2 years of the improper 'agreement' (p. 23, 24 Appx), Petitioner filed a formal Notice to Compel Arbitration in the proper District Court. The case was referred, not to arbitration under the local rule, but to the Magistrate Judge, to whose jurisdiction Petitioner objected; requesting judicial review.

Petitioner's Original Complaint was entered on the same day that the U.S.A. filed Motion to Dismiss through the Attorney of signature to the improper 'agreement'. Petitioner objected; requesting trial (9 U.S.C. 4) on the making of the arbitration agreement, filed August 11, 1998.

On December 22, 1998, the Magistrate Judge adopted the argument of the Respondent. Petitioner objected; moving for Summary Judgment. The recommendation of the Magistrate was accepted; case dismissed. Petitioner filed Notice of Appeal; then a Formal Application for arbitration (9 U.S.C. 3), and Motion to Alter or Amend Judgment. The Judge dismissed; amended Notice of Appeal filed: (5th Cir.(Appx))) 99-50146, 99-50218.) On March 15, 1999, Original Petition for Writ of Certiorari filed.

(ii) *28 U.S.C. Sec. 1291*: **Final decisions of district courts**
The courts of appeals (...) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, ..., except where a direct review may be had in the Supreme Court....

(h) (Rule 10) It would seem that the District Court believes this cause of action to be frivolous in nature. It is only as frivolous as 10 years of wrongful Federal Tax Liens; and the action taken by the United States upon learning of its liability. Does the United States apologize to its citizens, and attempt to make amends? Hardly; at least in this instance. It is comfortable in its power.

In seeking Justice, and Compensation, through Arbitration, (where the outcome has yet to be determined,) Petitioner has stumbled into a legal minefield: has no citizen ever sought to "compel" the U.S.A. to arbitrate before? Petitioner was of the belief that this is the method of preference; but that hardly seems the case. The District Court turned a blind eye to Petitioner, the Law, and the Judicial Oath; is there not an established process for such a valid request? Obviously, the law does not apply itself. Leaving one very important question open, and unanswered.

The compelling reason for granting this Petition for Writ of Certiorari is that the United States does **not** believe that it must abide by the same law through which it would govern; it does **not** believe that it can be "compelled" to arbitrate. This common citizen does **not** believe that it should have to be... "compelled".

From the beginning, the official argument of the various agencies of the government involved in this case has been to point to the three-year statute of limitations on income-tax refunds; (the issue of damages having been avoided altogether.)

Then why would the Internal Revenue Service voluntarily nullify the position of the U.S.A. by now issuing a negotiable tax refund check, in the amount of $68.30, with 1.35 INTEREST, for the tax-year ending December, 1988? (Please see Exhibit A.)

If, and when, the Respondent is finally called to speak to the issue, you may indeed find the answer mind-boggling; the accounting incredible.

Yet, any of the Federal Employees involved in this case, could, should the situation arise, "compel" the U.S.A. to arbitrate, "invoke" Title 9 U.S.C. Sec. 4; and the case could not be "dismissed" because the United States is an indispensable party!

Certainly, the attorneys for the U.S. would conduct themselves in the proper manner, applying the law in consistent and legitimate fashion, allowing signatures to "agreements" only when lawful; without allowing wrongful waiver of compensation. Further, any Magistrate Judge involved would be expected to consider only issues provided for by statute; and any District Judge whose Judgment was called for would incorporate all of his wisdom with his knowledge of the Law, and rule accordingly.

In the alternative, this citizen is expected to be satisfied with lesser, and unequal, treatment.

Petitioner is of the belief that only the **Supreme Court** of the United States of America has the power to review the actual application of revenue-law; that only the **Supreme Court** can make the half-truths and deceptive-practices cease.

America is only as great as its treatment of its weakest citizens.

The Constitution provides a process for the disenfranchised to follow. Those who have served in the capacity as catalysts for change have an obligation to those that follow to see this process through.

Petitioner humbly requests, in keeping with the Constitution, that This Court review this case.

Petitioner petitions; and will follow the lead of This Court.

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iv*

EXHIBIT A
[ON FILE WITH THE CLERK OF THE COURT]

UNITED STATES TREASURY 15-51 A 076,166,118
000

[SEAL] Month Day Year AUSTIN, TX - Check No.
Treasury 04 30 99 9 2301 88280847
Financial
Management 88280847 I30 012881874DAVI AUSTIN TAX
Service REFUND
039-18-4698

Pay to
the order of ROSE M DAVISON 12/88
8540 MICHELLE WAY 47
SAN ANTONIO TX 78239-2738 DOLLARS CENTS

$*****68*30
VOID AFTER ONE YEAR

1.35 INTEREST

23012

000000518 882808476 040499

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